

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

KENNETH W. BYRD)	
Claimant)	
VS.)	
)	
EATON CORPORATION)	Docket No. 169,897
Respondent)	
AND)	
)	
CONTINENTAL INSURANCE)	
Insurance Carrier)	
AND)	
)	
KANSAS WORKERS COMPENSATION FUND)	

ORDER

Claimant requested Appeals Board review of the October 1, 1996, Award entered by Administrative Law Judge Bruce E. Moore. The Appeals Board heard oral argument by telephone conference.

APPEARANCES

Claimant appeared by his attorney, Beverly Dempsey of Wichita, Kansas. Respondent and its insurance carrier appeared by their attorney, Edward D. Heath, Jr., of Wichita, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Thomas D. Arnhold of Hutchinson, Kansas. There were no other appearances.

RECORD AND STIPULATIONS

The Appeals Board considered the record and adopted the stipulations listed in the Award of the Administrative Law Judge.

ISSUES

Claimant raised the following issues in his Request for Review:

- (1) Whether claimant's low-back injury arose out of the accident that occurred while claimant was working for the respondent on October 30, 1989.
- (2) Whether claimant served the respondent with a timely written claim for his low-back injury.
- (3) The nature and extent of claimant's disability that includes injuries to his left shoulder and low back.
- (4) Whether claimant is entitled to medical expenses incurred for the treatment of claimant's low-back injury.
- (5) Whether claimant is entitled to future medical expenses for claimant's low-back injury.
- (6) Whether claimant is entitled to temporary total disability payments from September 17, 1992, through April 23, 1994.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record, considering the briefs, and hearing arguments of the parties, the Appeals Board finds as follows:

The claimant claims injury to both his left shoulder and low back while working for the respondent on October 30, 1989. The Administrative Law Judge found claimant was entitled to permanent partial disability benefits based on a 7 percent permanent functional impairment to the body as a whole for only the left shoulder injury. The Administrative Law Judge further found claimant was entitled to temporary total disability benefits, medical treatment expenses, and future medical benefits upon application to the Director as a result of the left shoulder injury. However, the Administrative Law Judge found that claimant failed to prove that his low-back injury was causally related to the October 30, 1989, work-related accident. Thus, claimant was denied Workers Compensation benefits for the low-back injury. Claimant appeals and urges the Appeals

Board to find that the record supports the conclusion that claimant's low-back injury also occurred as a result of the October 30, 1989, accident. The Appeals Board finds, however, that the Administrative Law Judge's Award should be affirmed.

(1) The Appeals Board finds that the Administrative Law Judge's Award sets out findings of fact and conclusions of law that are detailed, accurate, and supported by the record. The Appeals Board further finds that it is not necessary to repeat those findings and conclusions in this order. Therefore, the Appeals Board adopts the Administrative Law Judge's findings and conclusions as its own as if specifically set forth herein.

The respondent and the Fund stipulated that claimant injured his left shoulder at work on October 30, 1989, when a scooter hit claimant from behind as he was walking down an aisle at work. The scooter pinned the claimant against a fence injuring his left shoulder. Claimant was diagnosed with a left rotator cuff tear which required two surgeries to repair. The record contained only one permanent functional impairment rating. Dr. Black, who was claimant's treating physician, determined that claimant had a 7 percent whole body permanent functional impairment as a result of the left shoulder injury.

Following claimant's second shoulder surgery, Dr. Black released claimant to return to his regular job with the respondent without restrictions on June 19, 1991. Claimant continued to work for the respondent until September 5, 1992, when he awoke with leg cramps and could not walk. Claimant was in severe pain and sought medical treatment on September 9, 1992, with his family physician, Charles C. Cunick, D.O. Dr. Cunick referred claimant to orthopedic surgeon, Neonilo A. Tejano, M.D., in Halstead, Kansas. Dr. Tejano diagnosed claimant with a herniated disc at L4-5 and a degenerative disc at L5-S1. On October 6, 1992, Dr. Tejano excised the disc at L4-5, fused the vertebrae from L4 to S1 and implanted a bone growth stimulator. After the back surgery, claimant was unable to return to work for the respondent and elected to take early retirement.

Claimant relates his back injury to only the October 30, 1989, accident at work. The record contains a written claim dated May 28, 1990, that claimant served on the employer for the October 30, 1989, accident and another written claim served on the employer on October 3, 1992, specifying injury to claimant's low back, left shoulder, and left hip as the result of the October 30, 1989, accident. Claimant filed an application for hearing on October 6, 1992, specifying the October 30, 1989, accident that caused injury to claimant's low back, left shoulder, left hip, and left leg.

In the Administrative Law Judge's Award, he concluded the evidence failed to establish that claimant's low-back injury was the result of the October 30, 1989, accident. Specifically, the Administrative Law Judge found that the record established claimant suffered leg cramps and pain in his back as far back as 1974 when he sustained a work-related low-back injury. Between the October 30, 1989, accident and September 5, 1992, when claimant woke-up with severe back pain, claimant had not complained to either the plant nurse or his family physician of any continuing back

problems. The Appeals Board finds, as did the Administrative Law Judge, that claimant failed to present persuasive evidence to prove the October 30, 1989, accident had a causal relationship to claimant's low-back condition.

The other issues raised by the claimant are found to be moot based on the Appeals Board's conclusion that claimant's back injury did not arise out of the October 30, 1989, work-related accident.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award of Administrative Law Judge Bruce E. Moore dated October 1, 1996, should be, and is hereby, affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of June 1997.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Beverly Dempsey, Wichita, KS
Edward D. Heath, Jr., Wichita, KS
Thomas D. Arnhold, Hutchinson, KS
Bruce E. Moore, Administrative Law Judge
Philip S. Harness, Director